

**Minutes
Bar Harbor Planning Board
March 3, 2010
Council Chambers – Municipal Building
93 Cottage Street
6:00 PM**

I. CALL TO ORDER

Members Present: Kevin Cochary, Chair; Lynne Williams, Vice Chair; Buck Jardine, Secretary; Kay Stevens-Rosa, Member.

Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Attorney.

II. ADOPTION OF THE AGENDA

Ms. Williams moved to adopt the agenda as slated. Ms. Stevens Rosa seconded the motion and the Board voted unanimously to approve the motion.

III. REGULAR BUSINESS

A. Continuation of Public Hearing – SP-09-02 – West Street Hotel

Project Location: West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 147, and 149.

Applicant: North South Construction

Application: Construct 102 room hotel and accessory uses.

The applicant stated that they had no further amendments to the site plan or other supporting documents.

Mr. Jardine commented that he had reviewed the DVD from the February 3, 2010 meeting and noted that the applicant had mischaracterized his views on the status of the parking garage. He said that he continues to believe the definition of a commercial parking garage indicates that the parking deck is not a building. However, because the green space provided on the Rodick Street side of the parking deck fits with the *intent* of the ordinance, he would have voted to allow this particular green space to count toward the applicants proposed parking credits.

Mr. Cochary asked the applicant to review the building's mechanical space calculation and whether it would exceed 30% of the total roof area. The applicant stated that no mechanical space would reach or extend above the 45 foot height requirement. Therefore, the mechanical space would not be subject to this requirement. Mr. Bearor stated that he did not believe the plan provided adequate detail for the Board to determine if this requirement had been met.

Mr. Cochary reviewed his thoughts of the height of the proposed building in relation to the Land Use Ordinance. He stated that he believes the ordinance makes no provision for a fifth story, and therefore the dwelling space calculation should be equal to the fourth story, and not that portion of the hotel above 35 feet as the applicant proposed. He stated that he believes when the ordinance is read as a whole, its intent is clear. The intent of the ordinance is to allow a three story building by right, with the exception that if a developer wanted to build a fourth story, he would need to devote the floor area equal to the fourth story to dwelling space. Ms. Krieg added that at the time the Board wrote the height provision, it did not anticipate that a fourth story would be below 35 feet. Mr. Cochary noted that if one followed the logic of the applicant's argument, then a structure that did not meet the 35 feet in height, but contained 4 stories, would not have to devote any area to dwelling space' which, in his opinion, would not make sense.

Mr. Hamilton reviewed several definitions from the ordinance including floor area, he stated that he believes this is a two-dimensional term.

Mr. Salvatore stated that the ordinance only regulates stories by façade height. He further noted that the ordinance is silent as to how many actual stories are permitted, just how many are visible as part of the facade. Mr. Moore commented that the average story is nine feet tall – which means that five stories would fit within the height maximum of 45 feet. Mr. Moore reviewed his recollection of the adoption of the ordinance and how it was developed at length.

Ms. Stevens-Rosa stated that it appears there are still areas on the fourth floor that are within the 15 foot setback requirement.

Mr. Jardine stated that the ordinance must be read in its entirety. He said that he feels the applicant has extracted portions of the ordinance to fit the needs of the project.

Mr. Hamilton stated that the intent of the ordinance may not match what is actually written.

Ms. Williams clarified a portion of the height ordinance. She stated that she feels the qualifying language in Section 125-21(G)(1) and (2) indicates that the 35 foot height reference in 125-21(G)(2)(a) would be the level where the fourth story was reached. Therefore, while Section 125-21(G)(2) does not specifically state fourth story, it intends that the dwelling space calculation would be equal to the fourth story or floor area of the fourth floor, because this would also be where the building would reach 35 feet in height. Mr. Jardine stated that he agreed.

Ms. Krieg reviewed the definitions of grade and mean original grade. She stated that she believed the Board had interpreted the definitions incorrectly in the past. Mr. Moore clarified that the finish grade would in fact be lower than mean original grade, so measuring from finish grade would actually reduce the height of the project.

Several members of the public spoke in favor of the project citing various economic development reasons the project would benefit Bar Harbor.

Ms. Williams suggested closing public hearing. Mr. Hamilton stated that he wished the Town Attorney to weigh in on the floor area and habitable space calculations before the Board closed the public hearing. Mr. Hamilton restated the applicant's position regarding height.

Ms. Krieg summarized the previous draft decision and its references to the Comprehensive Plan. Mr. Moore stated that documents other than the Comprehensive Plan were cited which should not be included as a basis for a decision. Mr. Hamilton also stated that recent case law has determined a community may not deny a project based primarily on its compliance with the Comprehensive Plan.

Ms. Williams moved to close public hearing. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

The Board reviewed the draft decision. Mr. Cochary reviewed the conditions of approval outlined in the draft decision. He noted that the applicant is responsible for gaining Town Council approval for any direction or right of way changes to Lennox Place. Ms. Williams, Mr. Jardine, and Ms. Stevens-Rosa agreed.

The Board reviewed the height provision at length. Mr. Jardine commented that he feels that 35 feet and third floor are linked when Section 125-21(G) is read as whole. Ms. Stevens-Rosa stated she agreed. She added that when reading the ordinance, she felt that one must give meaning to each of its parts.

Mr. Jardine moved to deny the project based on the fact that the applicant had not used the floor area of the fourth floor to calculate the dwelling space allocation. Ms. Williams seconded the motion and the Board voted unanimously to deny the project.

Ms. Stevens-Rosa moved to amend Item Q in the draft decision to remove the requirement that the applicant sweep the streets daily. Instead, the streets should be swept as needed. Mr. Cochary seconded the motion and the Board voted unanimously to approve the motion.

IV. OTHER BUSINESS

A. Introduction of possible land use planning projects and timeline for fall 2010 Town Meeting.

Ms. Krieg reviewed the list of zoning projects scheduled for Fall Town meeting and the timeline for public meetings. She also asked the Board to consider amending the cell phone tower requirement which prevents towers at schools.

V. PLANNING DIRECTOR'S REPORT

Ms. Krieg had nothing to report in addition to the project list for Fall Town Meeting.

VI. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

There were none.

VII. ADJOURNMENT

Mr. Jardine moved to adjourn the meeting. Ms Williams seconded the motion and the Board voted unanimously to approve the motion.

Minutes prepared by Staff Planner Brian Madigan, and reviewed by secretary Clyde L. Jardine, for Planning Board Review at their March 17, 2010 meeting

Signed as approved:

Clyde L. Jardine, Secretary
Planning Board, Town of Bar Harbor

Date